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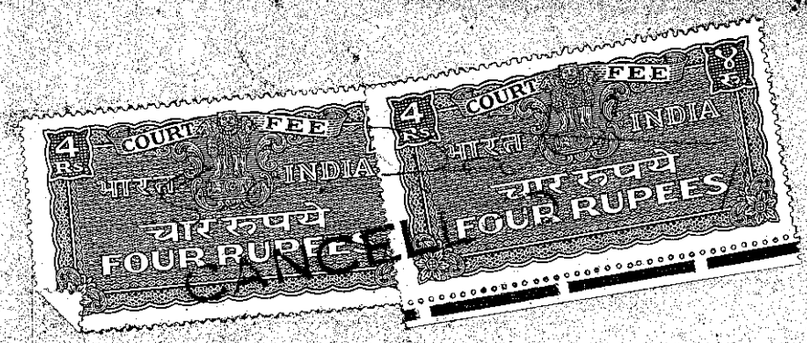

(02)

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CR. REVISION NO. 57 OF 1989.

APPLICANT. Babulal son of Pulai,
Occupation Agriculture,
resident of village Sahaspur,
Police Station Pandaria,
District Bilaspur, M.P.

V E R S U S .

NON-APPLICANT. 1. Kawalram Sahu son of Dukhiram Sahu, aged 30 years, resident of village Sahaspur, Police Station Pandaria, District Bilaspur, M.P.
2. State of Madhya Pradesh.

APPLICATION UNDER SECTION 397/401 OF THE CODE OF CRIMINAL PROCEDURE.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

आदेश पत्रक

मामला क्रमांक Cr.Rev. 57/89 **सन्** 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE MR. L.C.BHADOO,
& HON'BLE MR. DILIP RAOSAHEB DESHMUKH, JJ

23.6.2005

When the matter is called none appears on behalf of the applicant inspite of service of notice of this complaint on the applicant.

Mr. Rajeev Shrivastava, counsel for non-aplicant No.1.

Mr. M.P.S. Bhatia, Panel Lawyer for non-applicant No.2/State.

Oral.

Applicant-Babulal, who is brother-in-law of prosecutrix Jangliya Bai, has preferred this criminal revision under Section 397 read with Section 401 of the Cr.P.C. being aggrieved by the judgment of acquittal dated 19.12.1988 passed by learned 3rd Additonal Sessions Judge, Bilaspur in S.T. No.19/87 whereby learned Additional Sessions Judge acquitted the non-applicant No.1 herein from the charge of Section 376 of the IPC for committing rape on the prosecutrix.

We have heard learned counsel for non-applicant No.1 & Mr. M.P.S. Bhatia, Panel Lawyer for non-applicant No.2/State.

Perused the judgment of trial court, evidence of prosecutrix Jangliya Bai (PW-4) as also the evidence of brother-in-law of prosecutrix namely Babulal (PW-5) who said to be reached on the spot at the time of commission of offence.

Learned Additoinal Sessions Judge not believing the prosecution case acquitted the accused/non-applicant No.1 on the ground that prosecutrix Jangliya Bai was the consenting party to the said act and reasons given for not believing the prosecution case were that the prosecutrix has given evidence before the court in exaggerated manner

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

about the facts which were not mentioned by her in the police statement as also in the F.I.R. The other ground has been mentioned that Jangaliya Bai has stated in her evidence that she received injuries when the accused/non-applicant No.1 was committing rape on her, whereas, as per medical report no injury was found on the body of prosecutrix. Apart from that, it has also been mentioned that it is not known that why the prosecutrix went to fetch the grass at such a far-off place when that grass was already available in the nearby place. From the evidence of Babulal (PW-5) it appears that Babulal saw Jangaliya Bai & accused Kawalram when they were dressing themselves after the intercourse, that made Jangaliya Bai suspicious and thereafter, only the matter was reported to the police. It has also been taken one of the grounds for not believing the evidence of Jangaliya Bai that when the accused was undressing her she had not objected the accused.

Having seen these reasons in the judgment we have carefully gone through the evidence of Jangaliya Bai (PW-5) & Babulal (PW-4) and the reasons assigned by the trial court for not believing the evidence of prosecutrix are appears to be correct. If we look into the evidence of prosecutrix Jangaliya Bai, she has stated in the examination-in-chief that when accused caught hold of her she started abusing him by saying *"Rogha, Berha, Bhadua'* and on this the accused/non-applicant No.1 threatened her with dire consequences, said that he will kill her and thereafter, he fell her down on the earth, but this part of the evidence does not find place in the F.I.R. as also in the police diary statement of the prosecutrix. Therefore, the above

(पेट. बंधक)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

part of evidence of the prosecutrix is no doubt an exaggeration and improvement before the court. Of-course in the later part of the evidence she has stated that when the accused was busy in committing rape on her she tried to escape from the clutches of the accused with the help of hand & leg, but to no consequences. It has been mentioned by the trial court that when she made efforts to get herself released from the clutches of the accused why injuries were not found on back of her body. In the cross-examination the prosecutrix has stated that she received injuries on the back, but the medical report of the doctor is not suggestive of this fact. Dr. Smt. Sudha Pandey (PW-3), who examined the prosecutrix, has stated in paragraph No.2 of her evidence that she was not able to give definite opinion about the intercourse, as the prosecutrix was habitual in intercourse and there was no sign of any violence on the body of the prosecutrix. The prosecutrix in the cross-examination has further stated that after felling her down on earth the accused first opened the buttons of her blouse, there were five buttons in the blouse, thereafter, removed the lungda and then committed rape on her. She has further stated that when the accused was opening the buttons of her blouse and undressing the lungda she did not raise any cry and she raised the cry only when accused was committing rape on her. Further she has stated that when the accused was in the process of committing rape on her, Babulal came on the site.

PW-5 Babulal has stated in his evidence that he heard the cries of a girl '*save save*' but he took 15-20 mintues to reach the place of occurrence. In the cross-examination he has stated that after hearing

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the cries he had not rushed towards the site from where he heard the cries because he thought that someone might be there but when Kawalram stood up and her sister-in-law also stood up and started wearing clothers then he thought that Kawalram is assaulting her sister-in-law and then only he ran towards that site and thereafter, he started chasing Kawalram. He did not ask anything from her sister-in-law. Kawalram started running only after seeing him.

Therefore, in view of the above evidence of these two witnesses, in our considered opinion the finding recorded by the trial court is based on the legal and sound reasonings that the prosecutrix was the consenting party and she reported the matter because her brother-in-law Babaulal saw her and Kawalram at one place. Even the matter was reported with a delay of 15 hours and no explanation regarding delay has been given. As such, we are of the opinion that there is no reason before us to interfere with the finding of the trial court and it is settled law that if two views are possible on the evidence available on record then the appellate court or revisional court should not normally interfere on the view taken by the trial court, unless the finding is perverse or contrary to the record.

In the result, we are of the opinion that this revision has no merit same is liable to be dismissed and it is, accordingly, dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

Roshan/-

(पीछे देखिये)